

July 2, 2003

Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary  
Massachusetts Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

Re: Comments, Investigation re: Discount Program Penetration Rate, D.T.E. 01-106

Dear Ms. Cottrell:

Enclosed for filing please find the Attorney General's Comments. Thank you for your assistance.

Sincerely,

Colleen McConnell  
Assistant Attorney General

cc: Michael Killion, Hearing Officer  
Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications and Energy	)	
on its own Motion pursuant to G.L. c. 159, §105 and	)	D.T.E. 01-106
G.L. c. 164, §76 to investigate increasing the penetration rate for	)	
discounted electric, gas and telephone service	)	
	)	
	)	

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**COMMENTS OF THE ATTORNEY GENERAL**

**I. INTRODUCTION**

On December 17, 2001, the Department issued an Order opening a formal investigation into increasing the penetration rate for programs available to low-income customers eligible for gas, electric and telephone discount service. In that order, the Department indicated that it seeks to (1) minimize barriers in determining subscriber eligibility and (2) ensure that eligible customers are enrolled in available discount programs.

On April 29, 2003, the Department held a meeting to discuss a proposed computer matching program in which the Executive Office of Health and Human Services (“EOHHS”) would exchange customer eligibility information with electric distribution companies, gas distribution companies and eligible telecommunications carriers (the “utilities”) for the sole purpose of enrolling eligible customers in discount programs.

On June 19, 2003, the Department issued a Briefing Question and requested comments on any legal impediment or legal justification for utility participation in a computer matching program with EOHHS that would involve the electronic transfer of all residential accounts to EOHHS for the sole

purpose of identifying customers eligible for discounted service followed by destruction of non-matching data. The Attorney General submits his comments on the specific issue as requested by the Department.

## **II. DISCUSSION**

The Restructuring Act gave the Department additional options to increase customer participation in the low income discount programs. One option is “an automated program of matching customer accounts with lists of recipients of means tested public benefits programs.” G.L. c. 164, §1F(4)(i). During the April 29, 2003 meeting, parties discussed a proposed computer matching program between EOHHS and the utilities’ residential customer account databases. The proposed computer matching program would require each utility, on a quarterly basis, to electronically transfer its residential customer accounts database to EOHHS for electronic matching with the database of means tested public benefits recipients. The result of the matching program would be a list of customers eligible for discounted service. EOHHS would then forward this list of eligible customers to the utility and destroy the non-matching data.

Some parties raised concerns at the meeting about the confidentiality of the information belonging to customers who are not eligible for the discounted service. Although EOHHS would destroy the information on these customers, the utilities did not know how these customers would view the transmission of their information to a state agency.

While the Department should order the utilities to assist in implementing a computer matching program in order to increase the enrollment in the discounted service programs and minimize barriers in determining customer eligibility, the Department must also consider the issue of the confidentiality of all

customer information, not just those customers who are eligible for the discounted service programs.

### **III. RESPONSE TO DEPARTMENT'S BRIEFING QUESTION**

**Question 1.** Please discuss any legal impediment and legal justification for utility participation in a computer matching program with EOHHS that would involve the electronic transfer of all residential accounts to EOHHS for the sole purpose of identifying customers eligible for discounted service with subsequent destruction of non-matching data.

**Response:**

The Attorney General is currently not aware of any legal impediments to utility participation in a computer matching program. The statute sets forth the legal justification for utility participation in a computer matching program. According to G.L. c. 164, §1F(4)(i), “[e]ach distribution company shall conduct substantial outreach efforts to make said low-income discount available to eligible customers and shall report to said division, at least annually, as to its outreach activities and results.” *Id.* The statute specifically refers to automated matching as an option. “Outreach may include establishing an automated program of matching customer accounts with lists of recipients of said means tested public benefits programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified . . . .” *Id.* The computer matching program would facilitate the exchange of information between the utilities and EOHHS so that more eligible customers would benefit from discounted service programs. Several confidentiality issues regarding the information exchanged between the utilities and EOHHS have been resolved with the drafting of non-disclosure agreements and new applications for means tested public benefits that include a universal waiver by the recipient.

Until parties raised the issue in the April meeting, however, there had been no discussion on the

issue of privacy for those customers who would not be recipients of any means tested public benefits.

The average utility customer would not expect the utility to give his customer account information to EOHHS. The Department should therefore condition the approval of any computer matching program on: 1) full notification by utilities to all residential customers of their intent to release customer information to EOHHS, how often the releases are going to occur and the specific information that is to be released; and 2) providing customers the opportunity to prevent disclosure by notifying the utility. The utilities must remove from the database electronically sent to EOHHS the information on those customers who “opt out” and notify the utility that they do not want their information released.

#### **IV. CONCLUSION**

The Department should approve utility participation in a computer matching program with EOHHS subject to the conditions outlined in these comments.

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated in the attached service list by either hand-delivery, e-mail or U.S. mail.

Dated at Boston this 2nd day of July 2003.

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